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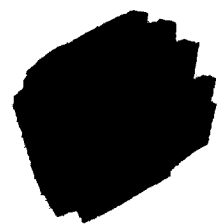
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Pacific Bell Petition for Rulemaking) RM No. 8496
to Amend Section 69.106 of the)
Commission's Rules)



REPLY OF NATIONAL DATA CORPORATION

National Data Corporation ("National Data"), by its attorneys, hereby replies to the oppositions and comments that were submitted in response to the petition for rulemaking which Pacific Bell ("Pacific") filed with the Commission on June 30, 1994.¹ In its opposition, National Data demonstrated that Pacific had failed to justify its request for the inclusion of a call set-up charge -- in addition to the current per minute usage charge -- in the switched access local switching rate element. The oppositions and comments filed by others confirm that Pacific has not met its burden of demonstrating that the requested rulemaking proceeding is in the public interest. They also raise other important questions about the accuracy of Pacific's claims. Pacific's petition should therefore be denied.

¹ Petition for Rulemaking of Pacific Bell to Amend Section 69.106 of the Commission's Rules, RM No. 8496 (filed June 30, 1994).

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I. THE COMMISSION SHOULD NOT GRANT THE REQUESTS OF PACIFIC BELL AND OTHER LECs FOR A WAIVER OF THE ACCESS CHARGE RULES OR TO CONSIDER CALL SET-UP CHARGES IN THE PRICE CAP REVIEW PROCEEDING.

Predictably, GTE Service Corporation ("GTE"), Bell Atlantic and Southwestern Bell Telephone Company ("Southwestern") support Pacific's request for a separate call set-up charge. Like Pacific, they claim to be experiencing higher costs due to an increase in shorter duration calls. And, like Pacific, they fail to provide any data or cost support for any of their conclusory statements. GTE and Southwestern, however, disagree with Pacific's request for a rulemaking proceeding to address this "problem." They argue that a separate rulemaking proceeding regarding this matter would be time-consuming and unnecessary. Rather, Southwestern urges the Commission to immediately "grant Pacific (and any other LEC so choosing) a waiver to institute a call set-up charge."² GTE asks the Commission to examine this issue as part of a comprehensive examination of the entire structure of switched access rates in the context of its price cap review.³

As an initial matter, the Commission should summarily deny Southwestern's request that Pacific and other LECs be granted a waiver. Neither Pacific nor any of the other LEC have met the standard for a waiver of the Commission's rules, nor have they even attempted to do so. In particular, no LEC has described any unique or extraordinary circumstances which necessitate the introduction of the proposed rate

² Comments of Southwestern Bell Telephone Company, RM No. 8496, at 3 (filed Aug. 22, 1994) (emphasis added).

³ See GTE's Comments, RM No. 8496, at 3-4 (filed Aug. 22, 1994).

structure in their service areas.⁴ The grant of a waiver in such circumstances would be both unwarranted and unlawful. This is particularly the case since Southwestern has not even attempted to provide any justification for its blanket waiver request.

Additionally, GTE's suggestion that the Commission examine Pacific's proposal in the context of the Commission's price cap review is impractical and infeasible. The Commission initiated its price cap review to consider the performance of the current price cap rules for LECs.⁵ It did not do so to consider piecemeal proposals for fundamental changes in the access charge rules. Further, as a practical matter, the call set-up charge requested by Pacific is not before the Commission in that proceeding. Thus, the Commission has no foundation for addressing call set-up charges in the price cap proceeding.

The Commission should therefore deny Southwestern's request to grant an immediate waiver to permit call set-up charges. The Commission should also deny GTE's request to consider a call set-up charge in the context of its price cap review.

⁴ See 47 C.F.R. § 22.19(a)(i)-(ii) (1994); WAIT Radio v. Federal Communications Commission, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("An applicant for waiver faces a high hurdle even at the starting gate. 'When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.' Rio Grande Family Radio Fellowship, Inc. v. Federal Communications Commission, 406 F.2d 664 (1968).")

⁵ See Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 1687 (1994).

II. PACIFIC HAS FAILED TO DEMONSTRATE THAT THE REQUESTED RULEMAKING PROCEEDING IS NECESSARY OR IN THE PUBLIC INTEREST.

In their oppositions and comments, National Data and others pointed out that Pacific's petition is founded upon the unsubstantiated claim that a per-message call set-up charge is in the public interest. As MCI Telecommunications Corporation ("MCI") correctly notes:

Pacific . . . neglects to provide evidence that shows short call volume growth compared to other length calls. The impact of the growth in short calls could easily be inconsequential if it is a relatively small part of all calls and/or if other calls are growing at a rate that renders short calls insignificant. Pacific Bell has not included the kind of call detail that would allow a fair analysis of its claims about the impact of short duration calls.⁶

Transaction Network Services, Inc. and CompuServe Incorporated raise similar concerns.⁷

Pacific's failure to provide underlying cost and traffic data is of even greater concern given the findings of the Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee") that Pacific's call set-up cost figures are higher than those of any other LEC.⁸ Indeed, the Ad Hoc Committee found that New England Telephone Company recently claimed call set-up costs less than a tenth of those asserted by Pacific

⁶ Opposition to Petition for Rulemaking of MCI Telecommunications Corporation, RM No. 8496, at 4 (filed Aug. 22, 1994) [hereinafter "MCI Opposition"].

⁷ See Comments of Transaction Network Services, Inc., RM No. 8496, at 3-4 (filed Aug. 22, 1994); Comments of CompuServe Incorporated, RM No. 8496, at 10-11 (filed Aug. 22, 1994).

⁸ See Opposition of Ad Hoc Telecommunications Users Committee to Petition for Rulemaking, RM No. 8496, at 11 (filed Aug. 22, 1994) [hereinafter "Ad Hoc Committee Opposition"].

in its petition.⁹ Not surprisingly, Pacific fails to address or account for such discrepancies.

In addition, MCI has appropriately questioned Pacific's claim that the use of the network is changing through the proliferation of shorter and shorter calls. Specifically, MCI points out that Pacific's average call length is actually 0.285 minutes longer than Bell Atlantic's average call length in 1989.¹⁰ As MCI correctly notes, "it seems ludicrous to think Pacific Bell's average call length was so much greater than Bell Atlantic's that it could be reduced by 'explosive' short call growth and still exceed Bell Atlantic's five-year-old average call length by 7 percent."¹¹

AT&T Corp. ("AT&T") points out another fundamental inconsistency in Pacific's petition. In particular, AT&T notes that

a truly cost-based local switching rate structure, one that allows for the recovery of costs from the appropriate cost causers, would establish a separate, flat-rated termination charge assessed on end users to recover the significant non-traffic sensitive costs associated with local switching that are currently recovered on a totally usage-sensitive basis from interexchange carriers.¹²

Although Pacific's purported goal is cost-based rates, its petition fails to address non-cost-based rates which clearly inure to its benefit. Thus, as AT&T suggests, Pacific's claimed goal of "disaggregation" of local switching is incomplete.

⁹ See id.

¹⁰ See MCI Opposition at 3-4 (citing Bell Atlantic Petition for Waiver, Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge, at Workpaper 7-2, (filed May 24, 1989)).

¹¹ Id.

¹² AT&T Comments, RM No. 8496, at 3-4 (filed Aug. 22, 1994).

The Ad Hoc Committee also accurately notes that Pacific's petition fails to take into account the complex linkages inherent in the Commission's access charge regime. As the Ad Hoc Committee has observed, even "assuming for the sake of argument that the cross subsidy identified by Pacific Bell in the Local Switching category exists, it is but a small fraction of the host of interrelated subsidies woven into the universal service support mechanism/jurisdictional separations procedure/access charge rule stew which defines the existing system."¹³ Thus, regardless of the merits of Pacific's proposal, the Commission would be ill-advised to address a single access charge issue in isolation, given these inherent interrelationships.

Further, MCI correctly points out that the current access rate structure permits substantial rate level flexibility.¹⁴ In particular, the Commission's price cap rules permit the LECs to change prices on a streamlined basis within limits that generally allow prices to increase or decrease by five percent a year. Thus, despite Pacific's claims, the Commission's current rules afford significant pricing flexibility.

Finally, National Data and others have emphasized the importance of the transaction processing industry to the U.S. economy. As First Financial Management Corporation notes, "the short-duration transaction services described by Pacific Bell are the vanguard of the information highway, bringing more and more services and conveniences to American consumers and increasing the productivity of American

¹³ Ad Hoc Committee Opposition at 4.

¹⁴ See MCI Opposition at 2-3.

business."¹⁵ Pacific's proposed call set-up charge would stifle the demand for these services and inhibit the development of the National Information Infrastructure. Given the deleterious impact of such a charge on the users of these services, the Commission should deny Pacific's petition for rulemaking.

III. CONCLUSION

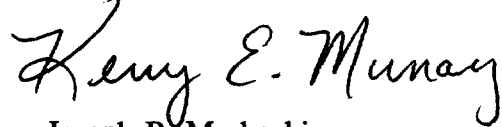
For all of the reasons set forth above and in National Data's opposition, the Commission should deny Pacific's petition to initiate a rulemaking proceeding to consider a call set-up charge. It should also deny Southwestern's request for an

¹⁵ Opposition of First Financial Management Corporation, RM No. 8496, at 4 (filed Aug 22, 1994).

immediate waiver to permit the introduction of such a charge. Finally, the Commission should deny GTE's request to consider a call set-up charge in the context of the Commission's price cap review.

Respectfully submitted,

NATIONAL DATA CORPORATION

A handwritten signature in cursive script that reads "Kerry E. Murray".

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September 6, 1994

CERTIFICATE OF SERVICE

I, Anne Fitzgerald, hereby certify that copies of the foregoing Reply of National Data Corporation, were served by hand or by First-Class United States mail, postage prepaid upon the parties listed on the attached service list, this 6th day of September, 1994.


Anne Fitzgerald